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November 16, 2009

VIA ECF

The Honorable E. Thomas Boyle
United States District Court
100 Federal Plaza
P.O. Box 9014
Central Islip, New York 11722-9014

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Re: David S. Taub and Marc Taub, as successor to Martin G. Taub, deceased, v.
Marchesi Di Barolo S.P.A., Index No.: 09-CV-599 (TCP) (ETB)

Dear Judge Boyle:

We represent Defendant Marchesi di Barolo ("Marchesi") in the above captioned matter.¹ We write in response to the letter that Mr. Ettelman filed earlier today. At the outset, we note that Mr. Ettelman filed his letter without meeting and conferring with counsel as required under Local Civil Rule 37.3(a).

Had Mr. Ettelman met and conferred with counsel for Marchesi, he would have learned that the allegations that he raises in his letter are spurious and false. As detailed in the accompanying affidavits of Jack Cacciato and Rachael G. Pontikes, annexed hereto as Exhibits A and B, the information that was the subject of Ms. Pontikes' inquiry was obtained from independent industry sources and not through any confidential information disclosed by Palm Bay. As such, pursuant to paragraph 8 of the parties' Stipulation and Protective Order, annexed here to as Exhibit C, the use of such information was completely appropriate and proper.

This Stipulation and Order has no effect upon, and shall not apply to, (a) any producing party's use of its own "Confidential" material for any purpose; (b) *any party's use of any document or other information developed or obtained Independent of discovery in this action for any purpose*; or (c) the trial of this action or court proceedings at or during trial. (emphasis added)

¹

Mr. Ettelman's letter was improperly filed before this Court. By order dated November 4, 2009, this case was reassigned from Your Honor. Given the gravity of the allegations, we believe it necessary to respond to Your Honor.

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It is truly unfortunate that Mr. Ettelman felt the need to level false allegations of this nature against a fellow member of the Bar without even a modicum of investigation. This letter violates not only the Local Civil Rules, but also the more general rules of attorney civility. Indeed, this appears to be nothing more than a pretense to cancel, unilaterally, for the third time, the continued depositions of the Taubs that were directed by this Court by order dated September 30, 2009 (Dkt #33). We have attached the three emails in which Palm Bay has unilaterally cancelled the Court ordered depositions as Exhibit D.

Accordingly, we respectfully request that Mr. Ettelman's letter be stricken from the docket and Marchesi be awarded fee and costs for having to respond to the same. We further request that this Court direct that the Taubs appear at the offices of Duane Morris LLP tomorrow morning at 10:00 AM to complete their thrice-cancelled depositions.

Sincerely,

s/John Dellaportas

John Dellaportas

JD:trs